

**STATE OF NEW HAMPSHIRE**

**MERRIMACK, SS.**

**SUPERIOR COURT**

**Docket No. 07-E-0517**

**In the Matter of the Liquidation of  
Patriot Health Insurance Company, Inc.**

**AFFIDAVIT IN SUPPORT OF  
MOTION FOR APPROVAL OF DISTRIBUTION OF ASSETS,  
DISPOSAL OF RECORDS AND TERMINATION OF PROCEEDING**

I, Peter A. Bengelsdorf, hereby depose and say:

1. I am the Special Deputy Liquidator of the Patriot Health Insurance Company, Inc. ("Patriot"), appointed by the Insurance Commissioner for the State of New Hampshire, as Liquidator ("Liquidator") of Patriot. I submit this affidavit in support of the Liquidator's Motion for Approval of Distribution of Assets, Disposal of Records and Termination of Proceeding. The facts and information set forth are either within my own knowledge gained through my involvement with this matter, in which case I confirm that they are true, or are based on information provided to me by others, in which case they are true to the best of my knowledge, information, and belief.

2. Patriot is a New Hampshire corporation and a New Hampshire-domiciled insurance company subject to regulation by the New Hampshire Insurance Department. On January 18, 2008, the Court entered an Order of Liquidation placing Patriot in liquidation and appointing the Commissioner as Liquidator. By order dated October 6, 2008, the Court approved a plan providing a framework for the eventual closure of the Patriot liquidation (the "Closure Plan"). Since that time, the liquidation has been proceeding under the supervision of the Court and in accordance with the New Hampshire Insurers Rehabilitation and Liquidation Act, RSA 402-C ("Act").

3. The claims against Patriot have been determined and the assets of Patriot have been collected. The Liquidator accordingly seeks approval of the process set forth below to distribute assets, dispose of records, discharge the Liquidator, and terminate the proceeding in accordance with the Act and the Closure Plan. In light of potential claims of the United States and the federal priority statute, 31 U.S.C. § 3713, these final steps will be subject to receipt of a waiver of claims from the United States. The Liquidator will best be able to close this proceeding as promptly and efficiently as possible by obtaining approval for the closure process now, handling the few administrative matters and requesting the waiver, and then holding the matter in “suspense” pending resolution of the waiver issue and final distribution to creditors.

4. After Patriot was placed in liquidation on January 18, 2008, the Court approved a Claim Administration and Funding Agreement between the Liquidator, the New Hampshire Life and Health Insurance Guaranty Association (“NHLHIGA”), Comprehensive Benefits Administrator d/b/a EBPA (“EBPA”), and MVP Health Insurance Company of New Hampshire (“MVP”) (the “Agreement”) on February 12, 2008. Pursuant to that Agreement, EBPA has adjusted claims incurred under Patriot health insurance policies prior to 11:59 PM on December 31, 2007.<sup>1</sup> EBPA has determined any amounts properly payable under Patriot health insurance policies, and provided Explanation of Benefits (“EOBs”) to the provider or subscriber. EBPA has advised NHLHIGA of the amounts properly payable on claims under Patriot health insurance policies. Where the total payable amounts on any individual life are less than the statutory \$100,000 per life cap on NHLHIGA payments, the amounts have been paid to the claimant by or

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<sup>1</sup> Claims incurred after that time are the responsibility of MVP. After the Commissioner was appointed as Rehabilitator of Patriot on December 12, 2007, the Rehabilitator entered an Assumption Agreement with MVP, which was approved by the Court December 12, 2007. The agreement provided for the transfer of Patriot health insurance policies to MVP effective January 1, 2008. The responsibility for claims incurred under Patriot health insurance policies prior to January 1, 2008 remained with Patriot.

on behalf of the NHLHIGA. There are two subscribers as to whom claims exceed NHLHIGA's statutory individual life cap of \$100,000.

5. The claim filing deadline in the Patriot liquidation was July 18, 2008. Patriot subscribers or members, or healthcare providers submitting claims on behalf of members or subscribers, were not required to submit proofs of claims unless they were not able to submit the claim in the normal course to EBPA by the claim filing deadline. Producers, attorneys, vendors and other general creditors were required to file proofs of claim. The Liquidator received a total of 98 proofs of claim, including a proof of claim from NHLHIGA. Most proofs of claim were for unpaid medical costs, and the Liquidator forwarded copies of all supporting material to EBPA for it to adjust the claims.

6. As described in the Liquidator's various reports, the claim determination process has now concluded. In accordance with the Closure Plan, the Liquidator has resolved the claims for healthcare services with respect to members/subscribers within the \$100,000 per life cap on NHLHIGA coverage by denying those claims, which have been adjusted by EBPA and satisfied by NHLHIGA. The Liquidator resolved the claims with respect to members/subscribers that exceed the NHLHIGA cap by allowing them as Class II claims in the appropriate amounts as determined by EBPA. As provided in the Closure Plan, NHLHIGA's claim for amounts it has paid with respect to claims for services within the cap has been allowed as a Class II claim, and its claim for administrative expenses allowed as a Class I claim. Also as provided in the Closure Plan, other claims were assigned to Class V priority and indefinitely deferred.

7. The Court has approved these determinations. The Liquidator has filed four reports of claims and recommendations. The second of these, the report as of April 14, 2009, addressed at least 1,415 Class II (policy related claims) submissions to EBPA that were deemed

proof of claims and resolved by EBPA claim recommendations. The Court has issued orders approving the claim reports and establishing allowed amounts and priorities for all of the claims. One claimant objected to a claim determination, and the Court overruled the objection on May 19, 2009. In total, the Liquidator presented and the Court has approved claims recommendations with a total allowed amount of \$1,976,679.12 consisting of \$150,502 in Class I (for NHLHIGA administration costs) and \$1,826,177 in Class II (which includes both \$493,614 of direct claims and \$1,332,562 for amounts paid by NHLHIGA under Patriot health insurance policies). However, there is overlap in the two categories of Class II claims because NHLHIGA paid \$129,289.80 in claims after the Liquidator had issued NODs to the direct claimants. Accordingly, the Liquidator will net those payments from the approved amounts. The NHLHIGA NOD included those amounts, so the total Class II claims eligible for distribution is \$1,696,887.32. As all proofs of claim have been determined, Patriot's liabilities have now been finalized.

8. I believe that all Patriot assets justifying the expense of collection have been collected. In light of the Assumption Agreement with MVP, Patriot's sole asset at the beginning of the liquidation was cash held at TD North Bank and Centrix Bank. The Liquidator has collected small amounts of reinsurance and subrogation. The only remaining issue is approximately \$3,700 in outstanding subrogation claims being handled by a collection agency. The Liquidator expects about \$2,700 of this amount to be collected in the next few months. To the extent these amounts are not recovered by the time the distribution is calculated, the Liquidator will assign them to NHLHIGA in accordance with the Closure Plan. The unaudited March 31, 2011 financial statements for Patriot are attached as Exhibit 1.<sup>2</sup> The March 31, 2011

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<sup>2</sup> Annual and quarterly statements for prior periods have been submitted as exhibits to previous Liquidator's Reports.

Patriot statements reflected \$641,504 in assets under the Liquidator's direct control. As of June 17, 2011, the assets of Patriot totaled \$649,413. Administrative expenses paid since March 31, 2011 have totaled \$822.

9. Now that the liabilities of Patriot have been determined, the Closure Plan provides that the Liquidator is to seek approval to distribute the assets to allowed claims in accordance with the statutory priorities (after paying or reserving for administrative expenses and NHLHIGA's Class I claim). For the reasons described below, however, the distribution will be subject to a waiver from the United States. Accordingly, in order to minimize judicial proceedings and administrative expense, the Liquidator has determined to address other issues that need to be resolved together with the distribution issue and bring all matters concerning closure of the estate before the Court at the same time. These issues include disposal of records, dissolution of the company, handling of unclaimed funds, and discharge of the liquidator and termination of the proceedings.

10. All claims other than administrative expenses have been assigned to Class II (the policy related claims class) or Class V (the residual class) in the amounts set forth in the schedules to the Liquidator's reports of claims and recommendations approved by the Court. Administrative expenses including NHLHIGA's administration cost claim have been paid on an ongoing basis during the liquidation. The Liquidator accordingly proposes to make a distribution of all assets after payment of any remaining administrative expenses (and withholding a small reserve not to exceed \$17,000 for post-distribution expenses) to pay a first and final dividend to Class II creditors based on the amounts of their respective allowed claims minus the statutory \$50 deductible.<sup>3</sup>

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<sup>3</sup> The statute provides that the deductible does not apply to NHLHIGA.

11. The available assets are \$649,413 as of June 17, 2011 (any interest earned or other cash received before the distribution will be added). The Liquidator projects that the administrative expenses from June 17, 2011 to closure of the estate, including incurred but unpaid amounts and the reserve for post-distribution expenses, will be approximately \$37,000. As described above, the Class II allowed claims after netting of later payments by NHLHIGA total \$1,696,887.32. The Liquidator accordingly estimates that the distribution will represent a payment of approximately 36.1% on each of the Class II creditor's remaining allowed claims. This estimate assumes that there will be no unexpected expenses or developments in closing the estate, that the process of obtaining the waiver is not prolonged, and that investment return on the Patriot assets does not decline. These factors individually or combined could result in a change in the distribution percentage.<sup>4</sup>

12. Making a distribution is complicated by the federal priority statute, 31 U.S.C. § 3713. As a result of the statute and judicial decision, I understand that the United States can – subject to any applicable statutes of limitation – assert claims at any time, regardless of claim-filing deadlines under state insurer liquidation statutes. Moreover, there is the possibility that, if a liquidator distributed all the assets of the estate, the United States might file a late claim and contend that the estate's inability to pay the claim makes the liquidator personally liable for the claim under the federal priority statute. The Liquidator is not aware of any liability of Patriot to the United States Government or of any United States' claim against Patriot. However, in view of the uncertainties created by the federal priority statute and the decisions, it is prudent for the Liquidator to raise these issues with the United States before making a distribution. The United States Department of Justice has provided waivers of federal priority claims to permit

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<sup>4</sup>As Class II claims will not be paid in full, lower priority claims will receive no distribution.

distributions in other liquidations, including waivers to permit early access distributions in the liquidation of The Home Insurance Company.

13. It is unknown how long it may take to obtain such a waiver from the United States. In order to move this matter forward, the Liquidator accordingly plans to resolve the other outstanding issues by this motion and then request a waiver from the United States. The proceeding will essentially be in “suspense” while the waiver issue is pending so as to minimize administrative expense. The process as described above is provided for in the proposed form of order submitted herewith.

14. Patriot’s records concerning policies effective after December 31, 2007 and any related claims were transferred to MVP in connection with the Assumption Agreement, and many records concerning other claims have been transferred to NHLHIGA. (In either case, most of the records are held by EBPA, which is adjusting all claims.) Now that the claims have been determined and the assets collected, the records of Patriot are generally no longer useful. The only exceptions are financial, tax, and corporate records supporting the Patriot tax returns; the investment records necessary to administer Patriot’s assets until distribution; and the records of the allowed claims necessary for making the distribution. Accordingly, the Liquidator recommends that the Court authorize the Liquidator to dispose of all remaining paper records of Patriot except documents in those three categories. Documents that the Liquidator identifies as confidential or commercially sensitive will be shredded. The Liquidator will offer the remaining records to NHLHIGA before destroying them or directing EBPA to destroy them. The Liquidator proposes to retain records in the three categories and imaged records until the distribution has been made, at which point the Liquidator recommends that all these remaining Patriot records be disposed of or deleted except for (1) the imaged records of the filings and

orders in the liquidation proceeding itself, which will be retained on the website of the New Hampshire Insurance Department (“NHID”), (2) a record of the allowed claims, which will be retained at the NHID in the event it is needed by the state treasurer to address unclaimed funds as set forth below, and (3) Patriot’s tax records, which will be turned over to the NHID.

15. The Liquidator recommends that Patriot’s corporate existence be dissolved at the time the Liquidator is discharged. A provision to that effect is included in the proposed form of order.

16. The Liquidator proposes that funds not collected within 120 days after the distribution checks are mailed to claimants be turned over to the state treasurer. Since the claimants are for the most part medical service providers or other corporate entities, not individual claimants, this should not cause any hardship.

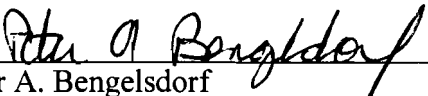
17. In order to minimize administrative expense, the Liquidator is proceeding with this closure motion to address all issues at one time. The Liquidator proposes that the Court enter an order that has two parts. First, it authorizes the distribution, subject to obtaining the waiver, and the other remaining steps in the closure process. Second, it provides for the subsequent discharge of the Liquidator and termination of the proceeding upon the Liquidator’s filing of a certificate of compliance after the remaining steps have been completed. This will minimize administrative expense and judicial proceedings by allowing the Liquidator to move forward with the closure process and proceed as far as possible now. The proceeding will then be placed in suspense until the United States acts on the request for waiver. Since there will be no activity other than monitoring the investments, the Liquidator’s reports should be limited to a description of progress with the federal government and unaudited statements of expenses and assets showing changes since the March 31, 2011 financial statement attached as Exhibit 1.



When the waiver is received, the distribution will go forward.<sup>5</sup> Once it is completed, the Liquidator will file the certificate to obtain discharge and terminate the proceeding. A form of the certificate is attached to the proposed form of order.

18. I believe that the process described above for distributing assets, disposing of records, and terminating the liquidation proceeding for Patriot is reasonable, prudent and in the best interest of the creditors of Patriot.

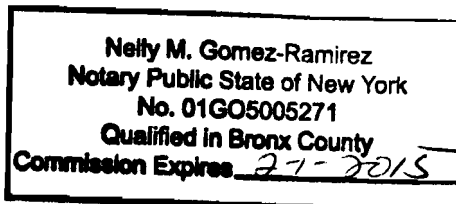
Signed under the penalties of perjury this 13 day of July, 2011.

  
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Peter A. Bengelsdorf  
Special Deputy Liquidator of Patriot Health Insurance  
Company, Inc.

STATE OF NEW YORK  
COUNTY OF NEW YORK

Subscribed and sworn to, before me, this 13<sup>th</sup> day of July, 2011.

  
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Notary Public/Justice of the Peace



<sup>5</sup> The Liquidator does not anticipate receiving any additional assets, but if any assets are received prior to the calculation of the dividend payments, they will be added to the distribution. As noted above, if any of the small outstanding subrogation recoveries remain outstanding at the time of distribution, they will be assigned to NHLHIGA. If assets are subsequently received that are uneconomic to distribute, they will be transferred to the state treasury. The unexpected receipt of material assets would be cause to petition to reopen the proceeding.

**Patriot Health Insurance Company In Liquidation**  
**Statement of Assets and Liabilities, and Receipts and Disbursements**

	January 1, 2011 to March 31, 2011	January 1, 2010 to December 31, 2010
<b>Beginning Cash</b>	\$ <u>786,347</u>	<u>798,202</u>
Cash Receipts - Claim Payment Recoveries	-	7,725
Misc Income	<u>8,200</u>	<u>-</u>
<b>Total Cash Receipts</b>	8,200	7,725
Cash Disbursements:		
Legal Expenses	2,114	8,131
Consultant and Outside Service Expenses	428	2,630
Other Expenses	<u>-</u>	<u>8,818</u>
<b>Total Cash Disbursements</b>	2,542	19,580
Excess of Receipts Over Disbursements	<u>5,659</u>	<u>(11,855)</u>
NHLHIGA Class I Claim Paid	<u>(150,502)</u>	<u>-</u>
<b>Ending Cash</b>	<u>641,504</u>	786,347
<b>Reserve for Allowed NHLHIGA Class I Claim</b>	<u>-</u>	150,502
<b>Ending Cash less Reserve for Class I Claim</b>	<u>\$ <u>641,504</u></u>	<u>635,845</u>

**Note - Basis of Accounting**

This financial statement is prepared using the modified cash basis of accounting which differs from accounting principles generally accepted in the United States. Only those assets that are within the possession of the Liquidator and other known amounts for which ultimate realization is expected to occur, primarily investments and cash, and certain receivables, are recorded. Only incurred but unpaid Class I (Administration Costs) liabilities, which are in a creditor class superior to all other classes, are presented in this financial statement.